

National regulator must pursue those who perpetuate fraud

Number of fraudulent immigration consultants growing

BY MICHAEL MCKIERNAN
For Law Times

Unlicensed representatives will continue to plague the Canadian immigration system until the national regulator of immigration consultants gets the power to go after rogues, says the president of an industry group.

The Immigration Consultants of Canada Regulatory Council can act on complaints and order disciplinary measures against its own licensed members, but it is powerless to deal with non-members who rip off prospective immigrants by claiming they can help them with their applications.

Complaints about fraudulent immigration representatives go instead to the Canada Border Services Agency, but Dory Jade, who heads the Canadian Association of Professional Immigration Consultants, says cases are falling through the cracks because the agency has bigger issues confronting it.

"They are a big organization that has to deal with drugs, national security, terrorist attacks and all kinds of problems that come up at the border," Jade says. "The problem of unauthorized representatives is a big one, and we believe it can be solved by the Government of Canada."

Jade says he has been encouraged by some high-profile successes scored by the CBSA in recent times, such as the crimi-



Dory Jade says the problem of unauthorized representatives in the immigration world is a 'big one,' but he believes the federal government can help.

nal convictions of several people associated with a fraud scheme run by Richmond, B.C.-based Xu Wang.

The unlicensed immigration consultant is currently serving a seven-year prison sentence for helping Chinese clients gain permanent residence in Canada using forged documents and falsified records. More than 1,000 of Wang's former customers faced investigation, and some have already been deported. Many more face the prospect of removal if they are found to have lied on their applications.

And deportations resulting from Project Honeymoon, a long-term CBSA investigation targeting fake marriages involving Canadian sponsors paid to wed foreign immigrants,

are also still working their way through the immigration appeal system years after the sting's launch in 2008.

CBSA spokesman Nicholas Dorion said in a statement that the agency "works to identify, investigate and prosecute to the fullest extent of the law those who violate our immigration laws."

In 2015, the CBSA opened 44 cases, of which 24 are still in progress. Of those that closed, 15 resulted in no charges, four saw charges laid and one more resulted in a conviction. For 2016, the total number of cases launched shrank slightly to 38. Just seven have run their course, none of which resulted in any charges.

However, Jade says hundreds more complaints have been lodged about fake consultants that don't meet the threshold for investigation.

"The CBSA will go after the big fish, and they have done a good job there. But with due respect, they are not undermining the business," Jade says. "When it comes to the person who has scammed maybe three or four vulnerable people, they will never go there. It's too much for them. They don't have the money."

In Dorion's statement, he said that "not all cases warrant a criminal investigation" by the CBSA.

"A number of factors including the availability of witnesses and evidence, severity of the offence and the public interest are taken into consideration

when deciding which cases warrant an investigation," Dorion added. "The cases that warrant a criminal investigation will be pursued with the resources that are required."

According to Jade, the IC-CRC could take some of the load off the CBSA if it was allowed to track down and tackle unlicensed consultants in the same way that law societies across the country take legal action against people engaged in unauthorized practice of the law.

"In the circumstances of this case and considering the submissions of Counsel, I am satisfied that the Applicant was denied her right to a fair hearing, arising from the actions of an imposter who passed himself off as a lawyer," Heneghan wrote.

However, the judge declined to certify Murphy's proposed certified question, which would have classified any fraudulently prepared PRRA application as a "miscarriage of justice" regardless of the applicant's chances of

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Mario Bellissimo

However, that would require a legislative amendment to formally recognize the ICCRC's role in the federal Immigration and Refugee Protection Act. The immigration consultant regulatory body currently operates as a non-profit with powers granted to it under a ministerial designation.

"If they could file for an injunction in court just like the law societies can against people who hold themselves out as lawyers, that would help, and it could be done for a smaller fee," Jade says.

Mario Bellissimo, a former president of Canadian Bar Association's national immigration law section, says the problem of fraudulent representatives has improved noticeably since 2011, when the passage of Bill C-35 added extra offences and penalties for unlicensed consultants.

"The CBSA is active, but internationally, things can get much more complicated," he says. "There have definitely been inroads made to curtail the problem, but it still exists, and it's obviously devastating for the people caught up in it."

Seamus Murphy, a lawyer with Ottawa immigration firm Gerami Law PC, recently acted for a Botswanan woman conned into believing her previous representative was a lawyer. An immigration officer rejected her pre-removal risk assessment application, the final bar to deportation, before she realized the man was neither a lawyer nor an immigration consultant.

Murphy took over and helped her launch an application for judicial review of the decision, claiming she had been denied a fair hearing due to the factually wrong submissions made to the officer by her old fake lawyer.

In her Dec. 8 decision in *Mudongo v. Canada (Citizenship and Immigration)*, Federal Court Justice Elizabeth Heneghan granted the Botswanan woman a new hearing before a different officer.

success. He says that would have made it easier for other people conned by their representatives to overturn negative decisions in future.

"Applicants are generally held responsible for the information contained in their application, whether or not they have reviewed it, and the test for ineffective assistance of counsel is fairly restrictive," he says. "You have to show that not only were you not competently represented but also that a miscarriage of justice occurred as a result. To me, justice is not just about the chance of success. There can be a miscarriage even if the person doesn't necessarily have a great shot at winning their case."

Murphy says it remains relatively easy for unscrupulous people to fly under the radar while holding themselves out as licensed representatives.

"They are targeting people without much money to begin with," he says. "And if the client loses, especially in a PRRA case, then they could be out of the country within a few months. That allows them to go undetected for quite a long time. In this case, my client was only able to stay in Canada because the court granted a stay of her removal."

Bellissimo says he fears all the focus on fraudulent immigration representatives. For example, the Government of Canada's immigration page features several prominent warnings about the dangers of fraud and the potential consequences for taking part in a scam.

"The overall portrayal of immigration representatives generally is negative," Bellissimo says. "I think there should be some more balance, with something that talks about the value of good representation by a qualified professional during a life-changing process. There are a lot of good people out there who are very committed to their clients."

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